

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-104-BO-1
No. 5:17-CV-315-BO

STEPHON BULLOCK,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

This cause comes before the Court on petitioner's second motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [DE 210]. The government has moved to dismiss the petition [DE 216] and the matter is ripe for disposition. For the reasons discussed below, the government's motion to dismiss is granted and petitioner's motion is dismissed

This petition was brought after the enactment of Title I of the Antiterrorism and Effective Death Penalty Act of 1996. 28 U.S.C. § 2244(3)(A) provides that before a second or successive habeas corpus petition may be filed in district court, the petitioner must move the appropriate court of appeals for an order authorizing the district court to consider the application. *See also* 28 U.S.C. § 2255(h).

Petitioner has filed a previous 28 U.S.C. § 2255 petition which was dismissed on the merits. [DE 189]; *see, e.g., Murphy v. United States*, 2013 WL 5278016 (E.D.N.C. Sept. 18, 2013) ("Dismissal of a first petition as time-barred constitutes a decision on the merits."). Therefore, this Court is without jurisdiction to review this matter until authorized to do so by the Fourth Circuit Court of Appeals. *See United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003). As petitioner has not received such authorization, his § 2255 motion must be dismissed.

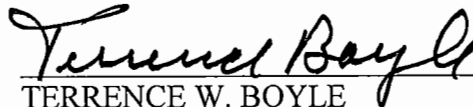
Certificate of Appealability

Rule 11 of the Rules Governing Section 2255 Cases provides that “the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability shall not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and any dispositive procedural ruling dismissing such claims is also debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). As reasonable jurists would not find this Court’s dismissal of petitioner’s § 2255 motion debatable, a certificate of appealability is DENIED.

CONCLUSION

Accordingly, for the foregoing reasons, respondent’s motion to dismiss [DE 216] is GRANTED. Petitioner’s motion to vacate pursuant to 28 U.S.C. § 2255 [DE 210] is DISMISSED. A certificate of appealability is DENIED.

SO ORDERED, this 26 day of April, 2018.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE